IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/02/2004

CORAM

THE HONOURABLE MR. JUSTICE P.D.DINAKARAN

C.R.P.(N.P.D)No.31 of 2004

1. A. Ponnusamy,
S/o.Late Arumugham

2. A. Subramanian,
S/o.Late Arumugham

3. Irulayee,
W/o. Late Arumugam
all residing at New Street,
Dharanallur, Tiruchirappalli 8. .....Petitioners

- Vs -

H.H.The Prince Of Arcot Endowments,
Tiruchirappalli rep. by Agent
having place of Office at Kiledhar St.,
Tiruchi 2. .....Respondent

Civil Revision Petition, under Section 115 of the Civil Procedure Code, against the order and decree dated 26.02.2003 passed by the Principal District Judge, Tiruchirappalli in AS.SR.No.1061 of 2003, as stated therein.

!For Petitioner :: Ms. Pushpa Sathyanarayan

^For Respondent :: Mr. V.S.Ramakrishnan

:O R D E R

This Civil Revision Petition is directed against the judgment and decree dated 26.02.2003 passed by the Principal District Judge, Tiruchirappalli in AS.SR.No.1061 of 2003.

2. The revision petitioners are the defendants in the suit O.S.No.1 831 of 1991 on the file of learned Principal District Munsif, Trichy, laid by the respondents for recovery of Rs.960/- as rent.

3. The suit was resisted by the revision petitioners / defendants on the ground that the respondent / plaintiff is not the owner of

the suit property as they have already obtained patta.

4. Learned Principal District Munsif, Trichy by judgment and decree dated 18.01.2002 rejecting the defence of the revision petitioners / defendants decreed the suit.

5. As against the said judgment and decree, the revision petitioners preferred an appeal in A.S.SR.No.1061 of 2003 before the learned Principal District Judge, Tiruchirappalli. Even without numbering the said appeal, by judgment and decree dated 26.02.2003 learned Principal District Judge, Tiruchirappalli dismissed the same by holding that the suit itself is only for a sum of Rs.960/-, which does not exceed Rs.10,000/-. Hence, the present civil revision petition.

6. Learned counsel appearing for the revision petitioners contends that the denial of opportunity to the petitioners to convince the Court that a question of law arise in the above appeal is contrary to the very scope and spirit of Section 96 of the Civil Procedure Code, which provides an appeal from the original decree.

7. Learned counsel appearing for the respondents re-iterated the reasons laid by the learned Principal District Judge in rejecting the appeal for want of question of law.

8. I have carefully considered the rival submissions of both the parties.

9. For better appreciation Section 96 of the Civil Procedure Code is extracted below:
"96. Appeal from Original decree:- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decision of such court.

(2) An appeal may lie from an original decree passed ex-parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of small causes, when the amount or value of the subject matter of the original suit does not exceed ten thousand rupees".

10. It is true that an appeal against the judgment and decree of the Small Causes Court, when the value of the subject matter does not exceed Rs.10,000/- will not lie, but the same shall lie only when there is substantial question of law.

11. It is settled law that question of law, though not pleaded, be permitted to be raised even on the appellate stage, provided sufficient opportunity is given to the other side and no fresh investigation or delving into the facts are undertaken, and that no party shall be prevented to appeal against the original decree merely on technical reasons.
12. If that be so, it is improper to reject the appeal even without numbering the same. To this extent, I am satisfied that the decree and judgment of the learned Principal District Judge, Trichirappalli in rejecting the appeal without numbering is illegal and therefore, the same are set aside. Hence, the matter is remitted back to the learned Principal District Judge, Trichirappalli with a direction to post the matter before the Court as to the maintainability, to enable the civil revision petitioners to satisfy the court that a substantial question of law arise in the appeal.

13. Accordingly, the Civil Revision Petition is disposed of.
No costs.

Index: Yes
Internet: Yes

Dpn/-

To:

The Principal District Judge,
Trichirappalli.

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